IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 409 of 2002
For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUNWARJI RAMJI BHAGTANI

Versus

SHANTILAL MULJIBHAI VASAVA

Appearance: MR KAMLESH B MEHTA for the Petitioner.
RULE SERVED for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/11/2002

ORAL JUDGEMENT

The petitioner herein has filed this revision application against the order passed by the learned Second Extra Assistant Judge, Bharuch, dated 21st September, 2001. By the impugned order, the learned Judge has not condoned the delay in filing the Regular Civil Appeal before the Court.

The petitioner herein instituted a civil suit, being Regular Civil Suit No.413 of 1997, for recovery of Rs.8,610/- from the respondent herein. The said suit was dismissed, against which the petitioner preferred an appeal before the appellate court. However, in preferring such appeal, there was a delay of about 65 days. The petitioner, therefore, gave an application for

condoning the said delay, which was numbered as Miscellaneous Civil Application No.23 of 2001. The learned trial Judge came to the conclusion that the applicant has not satisfactorily explained the delay, and, ultimately, the application was rejected. The effect of the same is that the appeal of the petitioner is not registered.

This Court has admitted this matter and rule was made returnable on 24th June, 2002. The respondent is already served, but he has not chosen to appear and resist this revision application.

It is argued by the learned Advocate for the petitioner that the petitioner was not aware about the order of the trial court, as he was out of station and, therefore, in the interest of justice, the appellate court should have condoned the delay in filing the appeal before the appellate court. Learned Advocate has relied upon the judgment of the Apex Court in Collector, Land Acquisition, Anantnag v. Mst. Katiji and others, AIR 1987 SC 1353. The Apex Court has considered the scope of Section 5 of the Limitation Act in the said judgment and in paragraph 3, it has been observed as under :-

> " ... ...
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> 3. The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that :-
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> 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
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> 2. Refusing to condone delay can result in

a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal

> machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is, therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.
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> ... ..."

Considering the facts and circumstances of the case, as well as considering the fact that the respondent has not opposed this petition by putting his appearance and considering the fact that liberal view is required to be taken for the purpose of considering the application for condonation of delay, in my view, this revision is required to be allowed and it is accordingly allowed. However, the petitioner is, to some extent, negligent in remaining present, as observed by the appellate Judge in the order. Under the circumstances, the petitioner is directed to deposit Rs.500/- by way of costs before the appellate court and such costs to be deposited on or before 20th December, 2002. In case such amount is deposited before the appellate court by the aforesaid time, the appeal of the petitioner may be decided on its own merits. The aforesaid amount which is going to be

deposited by the petitioner may be paid to the respondent towards the cost of the said application submitted by the petitioner before the appellate court. The delay is accordingly condoned on the aforesaid condition. The appellate court, before taking the appeal for consideration, shall ensure that the said amount is deposited by the petitioner, as indicated above.

This Revision Application is accordingly allowed. Rule is made absolute with the costs, as indicated above. However, there shall be no order of costs so far as this Revision is concerned.

20th November, 2002 (P.B. Majmudar, J.)

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(apj)